

§ 706.23

22 CFR Ch. VII (4–1–14 Edition)

use of consumer reporting agencies, collection agencies, and offset.

(f) *Aggregating requests.* If OPIC reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, OPIC may aggregate those requests and charge accordingly. OPIC will not aggregate multiple requests that involve unrelated matters.

(g) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, OPIC will inform the requester of the contact information for that source.

(h) *Remittances.* All payments under this part must be in the form of a check or a bank draft denominated in U.S. currency. Checks should be made payable to the order of United States Treasury and mailed to the OPIC FOIA Office.

§ 706.23 Advance payments.

(a) For requests other than those described in paragraphs (i)(2) and (i)(3) of § 706.22, OPIC will not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (i.e., payment before copies are sent to a requester) is not an advance payment.

(b) When OPIC determines or estimates that a total fee to be charged under this section will exceed \$250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. OPIC may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(c) Where a requester has previously failed to pay a properly charged FOIA fee to any agency within thirty calendar days of the billing date, OPIC may require that the requester pay the full amount due, plus any applicable interest on that prior request. OPIC

may also require that the requester make an advance payment of the full amount of any anticipated fee before OPIC begins to process a new request or continues to process a pending request or any pending appeal. Where OPIC has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(d) In cases in which OPIC requires advance payment, OPIC's response time will be tolled and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within thirty calendar days after the date of OPIC's fee letter, OPIC may administratively close the request.

§ 706.24 Requirements for waiver or reduction of fees.

(a) Records responsive to a request shall be furnished without charge or at a reduced rate below that established under § 706.22, where OPIC determines, based on all available information, that the requester has demonstrated that:

(1) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(2) Disclosure of the information is not primarily in the commercial interest of the requester.

(b) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government, OPIC will consider the following factors:

(1) The subject of the request must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or attenuated.

(2) The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of

information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public's understanding.

(3) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as his or her ability and intention to effectively convey information to the public shall be considered. It shall ordinarily be presumed that a representative of the news media satisfies this consideration.

(4) The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, OPIC shall not make value judgments about whether the information at issue is "important" enough to be made public.

(c) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, OPIC will consider the following factors:

(1) OPIC shall identify any commercial interest of the requester, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(2) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure.

(d) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(e) Requests for a waiver or reduction of fees should be made when the request is first submitted to OPIC and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the

date the fee waiver request was received.

(f) The burden of presenting sufficient evidence or information to justify the requested fee waiver or reduction falls on the requester.

Subpart D—Processing of Requests

§ 706.30 Timing of responses to requests.

(a) *In general.* OPIC ordinarily will respond to requests within twenty business days unless the request involves unusual circumstances as described in subparagraph (d) of this section. The response time will commence on the date that the request is received by the FOIA Office, but in any event not later than ten working days after the request is first received by OPIC. Any time tolled under paragraph (c) of this section does not count against OPIC's response time.

(b) *Multitrack processing.* OPIC has a track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. All non-expedited requests are processed on the regular track in the order they are received.

(c) *Tolling of response time.* OPIC may toll its response time once to seek clarification of a request in accordance with § 706.11(b) or as needed to resolve fee issues in accordance with §§ 706.22(c) and 706.23(d). The response time will resume upon OPIC's receipt of the requester's clarification or upon resolution of the fee issue.

(d) *Unusual circumstances.* Whenever the statutory time limits for processing cannot be met because of "unusual circumstances" as defined in the FOIA, and OPIC extends the time limits on that basis, OPIC will notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. This notice will be sent before the expiration of the twenty day period to respond. Where the extension exceeds ten working days, the requester will be provided an opportunity to modify the request or agree to an alternative time period for processing. OPIC will make its designated FOIA contact and its FOIA